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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91165809
Party	Defendant Nalge Nunc International Corporation Nalge Nunc International Corporation 75 Panorama Creek Drive Rochester, NY 146020365
Correspondence Address	DONALD F. FREI WOOD, HERRON & EVANS, L.L.P. 2700 CAREW TOWER 441 VINE STREET CINCINNATI, OH 45202-2917
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Date	09/26/2006
Attachments	Notice of Reliance-Interrogatories.pdf (3 pages)(82644 bytes) NOR-Interrogatories-Attachment.pdf (25 pages)(567220 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

<u>In re Application, Serial No. 76/572,253</u>)	
TriForest Enterprises, Inc.)	
)	Opposition No. 91165809
Opposer,)	
v.)	
)	
Nalge Nunc International Corporation)	
)	
Applicant-Respondent.)	
_____)	

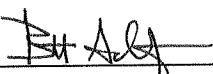
Commissioner for Trademarks
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

**APPLICANT NALGE NUNC INTERNATIONAL CORPORATION'S
NOTICE OF RELIANCE ON OPPOSER TRIFOREST ENTERPRISES, INC.'S
RESPONSE TO APPLICANT'S FIRST SET OF INTERROGATORIES**

Applicant Nalge Nunc International Corporation hereby provides notice of its reliance upon portions of Opposer TriForest Enterprises, Inc.'s Response to Applicant's First Set of Interrogatories. The portions of Opposer TriForest Enterprises, Inc.'s Response to Applicant's First Set of Interrogatories upon which Applicant relies are attached hereto.

Respectfully submitted,

Dated: September 26, 2006



Theodore R. Remaklus, Esq.
Brett A. Schatz, Esq.
Sarah Otte Graber, Esq.
WOOD, HERRON & EVANS, L.L.P.
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Attorneys for Applicant
Nalge Nunc International Corporation

CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being transmitted electronically to the United States Patent and Trademark Office, Trademark Trial and Appeal Board on the date shown below.

Date: September 26, 2006

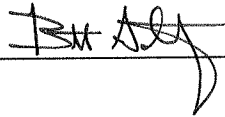


Anita L. Freeman

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **APPLICANT NALGE NUNC INTERNATIONAL CORPORATION'S NOTICE OF RELIANCE ON OPPOSER TRIFOREST ENTERPRISES, INC.'S RESPONSE TO APPLICANT'S FIRST SET OF INTERROGATORIES** was served by e-file copy and by Federal Express, Two-Day Delivery, upon counsel for Opposer TriForest Enterprises, Inc., Clement Cheng, Esq., Law Offices of Clement Cheng, 17220 Newhope Street, Suite 127, Fountain Valley, California 92708, on this 26th day of September, 2006.

Dated: September 26, 2006



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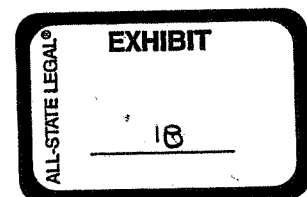
**OPPOSER, TRIFOREST ENTERPRISES, INC.'S RESPONSE TO APPLICANT'S
FIRST SET OF INTERROGATORIES**

In accordance with Rule 34 of the Federal Rules of Civil Procedure and Rules 2.116 and 2.120 of the Trademark Rules of Practice, TriForest Enterprises, Inc. ("TriForest") responds to the following interrogatories of Nalge Nunc International Corporation ("Nalge").

GENERAL STATEMENTS AND OBJECTIONS

General Statements

- A. Responding Parties reserve the right to supplement or amend these responses in the event that any facts, documents, or other evidence may subsequently be discovered.
- B. These responses are made without prejudice to Responding Parties right to introduce facts, documents, witnesses, or other evidence may be subsequently discovered.
- C. These responses are made without prejudice to Responding Parties' right to supplement or amend these responses in the event that any information previously available to Responding Parties may have been omitted by oversight, inadvertence, or good faith error or mistake.



- D. Except for the facts explicitly stated herein, no incidental or implied admissions are intended.
- E. Responding Parties expressly reserves:
 - a. All objections regarding the competency, relevance, materiality, probative value and admissibility of all information provided, documents produced and the contents thereof;
 - b. All objections as to vagueness, ambiguity, unintelligibility and overbreadth.
- F. Nothing Herein shall be construed as an admission by Responding Parties regarding the admissibility or relevance of any fact or document or of the truth or accuracy of any characterization contained in Propounding Parties' discovery requests.
- G. These responses are signed by counsel only as to the objections set forth in the responses. Responding parties specifically claims the attorney-client privilege and/or the attorney-work product privilege as to each and every response set forth herein.
- H. The fact that part or all of any discovery request has been answered should not be construed to be a waiver of any objection to any discovery request.
- I. Responding Parties responds to each and every discovery request subject to the foregoing, and each of the forgoing statements and objections is incorporated by reference into each of the following responses.

General Objections

- A. Opposer objects to these requests to the extent they seek the production of information, documents or things, which are subject to the attorney client privilege, attorney work product or other privilege or exemption from discovery.
- B. Opposer objects to these requests to the extent they seek the production of information, documents or things, which constitute or would reveal trade secrets or confidential business information belonging to Opposer.

- C. Opposers objects to these requests in so far as they seek the production of information, documents or things which are irrelevant or in material and are not reasonably calculated to lead to the discovery of admissible evidence, are not within the possession or control of Opposer, or are otherwise beyond the scope of the Federal Rule of Civil Procedure.

INTERROGATORIES

INTERROGATORY NO. 1:

Identify in detail each good with which Opposer has used, uses and intends to use Applicant's Mark or a configuration similar to Applicant's Mark, including without limitation, the configuration shown in U.S. Patent Application 10/759,659.

RESPONSE TO INTERROGATORY NO. 1:

Opposer previously sold the boston round that was claimed to be infringing. After receiving cease and desists from Apogent, opposer agreed to change the product configuration. Opposer incurred substantial cost to change the product configuration.

The opposer has no intent to use the functional features that are claimed in applicants mark, but would certainly like to because the particular features all have different utilitarian advantages. Opposer would like to avoid litigation and would only use the set of functional features if this opposition is successful.

INTERROGATORY NO. 2:

Identify the persons most knowledgeable about Opposer's sales, marketing, distribution, advertising and promotion, use and licensing of goods identified in response to Interrogatory No. 1.

RESPONSE TO INTERROGATORY NO. 2:

Steve Lin

INTERROGATORY NO. 3:

For each of the goods identified in response to Interrogatory No. 1, identify the first date, and each month thereafter, when Opposer used such goods, and produce all documents supporting such information.

RESPONSE TO INTERROGATORY NO. 3:

The Boston round has been sold as early as 2001 and in various configurations thereafter. The original product was canceled due to Apogent's threats, parent company of applicant.

INTERROGATORY NO. 4:

Identify each country, state or city, its territories and possessions, in which Opposer:

- A. is formally organized;
- B. is qualified under applicable law to do business as a foreign entity;
- C. has corporate headquarters maintained, including the exact street address and phone number of Opposer's main office; and
- D. owns, maintains or leases office or warehouse space.

RESPONSE TO INTERROGATORY NO. 4:

Opposer is a California corporation and other details are available at the Secretary of State website.

INTERROGATORY NO. 5:

Describe in detail the corporate structure of Opposer, including the identity of any and all entities related to or affiliated with Opposer.

RESPONSE TO INTERROGATORY NO. 5:

The opposer objects to this interrogatory as seeking trade secret information. Opposer objects to the interrogatory as not relevant.

INTERROGATORY NO. 6:

Identify all officers of Opposer since 2000.

RESPONSE TO INTERROGATORY NO. 6:

The opposer objects to this interrogatory as seeking trade secret information. Opposer objects to the interrogatory as not relevant. The officer would not be available in any case because the discovery cut off has terminated all right to depositions. Without waiving any of the objections, Steve Lin has been an officer since 2000.

INTERROGATORY NO. 9:

For each product identified in response to Interrogatories Nos. 1 and 7, state the date of first sale in the United States.

RESPONSE TO INTERROGATORY NO. 9:

Because the opposer did not exist before Dec 2001, the first date of the earliest sale of any bottle would be after 2001.

INTERROGATORY NO. 10:

For each product identified in response to Interrogatories Nos. 1 and 7, list all persons

knowledgeable about the sales, accounting, distribution and promotion of such product(s).

RESPONSE TO INTERROGATORY NO. 10:

Steve Lin

INTERROGATORY NO. 13:

Identify all persons who were involved in the selection, design, development, adoption and use of a water bottle configuration having Applicant's Bottle Configuration, or a similar configuration, and for each person, state his/her title, and the role s/he played to select, design, develop, adopt and use such.

RESPONSE TO INTERROGATORY NO. 13:

The opposer does not have sufficient knowledge to answer this interrogatory other than to say that Owens Illinois made the first Boston Round configuration. Regarding the design, development, adoption and use of the standard water bottle configuration, these should be available on the United States Patent Office website or in other public domain databases.

INTERROGATORY NO. 29:

Identify all plastic water bottles produced, manufactured or distributed by Owens-Illinois and Brockaway Glass.

RESPONSE TO INTERROGATORY NO. 29:

The opposer does not know all of the production of these companies. It is believed that these companies produce a wide variety of products.

INTERROGATORY NO. 31:

Describe in detail the cost of manufacturing the goods identified in response to Interrogatories No. 1 and No. 7.

RESPONSE TO INTERROGATORY NO. 31:

The opposer objects to this interrogatory as seeking confidential trade secrets, as irrelevant and as not calculated to lead to discoverable evidence.

INTERROGATORY NO. 33:

Identify each witness that Petitioner expects to testify, the subject matter to which the witness is expected to testify, each fact and/or opinion to which the witness is expected to give, the bases for each statement or opinion and identify all documents related thereto.

RESPONSE TO INTERROGATORY NO. 33:

The opposer has not figured out the witnesses yet. Witnesses may not be necessary if the opposer wins without trial. The opposer reserves the right to supplement this interrogatory.

INTERROGATORY NO. 34:

Identify each person who participated in or supplied information used in answering any of the above interrogatories; beside the name of each such person, state the number of the interrogatory answer(s) that person answered or supplied information.

RESPONSE TO INTERROGATORY NO. 34:

Steve Lin

INTERROGATORY NO. 35:

Identify all facts and documents supporting contention that in the Notice of Opposition that "[t]he 76572253 mark is functional and does not have secondary meaning."

RESPONSE TO INTERROGATORY NO. 35:

The answer to this interrogatory is in interrogatory response 11.

INTERROGATORY NO. 36:

Identify all facts and documents that Opposer claims show that the exclusive use by Applicant of Applicant's Mark would put competitors at a significant non-reputation-related disadvantage.

RESPONSE TO INTERROGATORY NO. 36:

The opposer objects to this interrogatory as being vague and overbroad. Applicant will have a perpetual patent claim that grows with time and has no certainty in the limitations and is not subject to the all limitations rule. A patent owner cannot remove limitations and elements from the patent claim, but Apogent (parent company of Nalgene) has sent cease and desist letters removing many elements and limitations from the 'patent claim' that was granted by the trademark Office. Therefore, the scope of the trademarks is now impossible to define. The functional advantages of the product are previously described in interrogatory response 11.

INTERROGATORY NO. 37:

Identify all facts and documents Opposer claims show that there are no alternative designs available that are functionally equivalent to the design of Applicant's Mark.

RESPONSE TO INTERROGATORY NO. 37:

The patent like claim given to applicant will, from time to time, shed limitations and elements from the claim, until applicant has a monopoly on all water bottles. Apogent's cease and desist letters remove many elements and limitations from the patent like claim that was granted by the Trademark Office.

This pattern of unfair competition and misuse of trademark registration provides an unfair advantage to large corporations. As a small start up company involved in selling plastic consumables we are concerned with the unfair and the monopolistic trade practices of the giant corporations.

INTERROGATORY NO. 38:

Identify all facts and documents Opposer claims show the design of Applicant's Mark provides for a simpler or cheaper method of manufacture than alternative designs.

RESPONSE TO INTERROGATORY NO. 38:

The functional advantages of the product are previously described in interrogatory response 11.

<u>2/28/06</u>	<u>Clement Cheng</u>
Date	Clement Cheng, attorney for applicant
(714) 825-0555; (714) 825-0558 fax	Newhope Law, PC
	17220 Newhope St Ste 127
	Fountain Valley, CA 92708-4283

VERIFICATION

I am an officer of TriForest Enterprises, Inc., the opposer in this action and am authorized to make this verification on its behalf. I have read and reviewed the above **OPPOSER, TRIFOREST ENTERPRISES, INC.'S RESPONSE TO APPLICANT'S FIRST SET OF INTERROGATORIES** and know the contents. The same is true of my own knowledge, except as to those matters that are alleged on information and belief, as to those matters, I believe it to be true.

I declare under penalty of perjury according to this the laws of the State of California that the above is true and correct.

Executed on May 29, 2006 (date) in the city of Irvine, California

X: 

signature

PROOF OF SERVICE

In the matter of App Ser. No. 76/572,253

I, the undersigned, declare I am over the age of 18 and not a party to this action. My business address is at 17220 Newhope St., Suite 127 Fountain Valley, CA 92708.

On February 28, 2006, I served:

**OPPOSER, TRIFOREST ENTERPRISES, INC.'S RESPONSE TO APPLICANT'S
FIRST SET OF INTERROGATORIES**

By placing true copies thereof in a seal envelope, addressed as follows to:

Donald L. Frei

Sarah Otte Graber

WOOD, HERRON & EVANS, LLP

2700 Carew Tower

441 Vine Street

Cincinnati, OH 45202-2917

(513) 241-2324

Attorney's for Applicant Nalge Nunc International Corporation

- ☒ **BY MAIL:** I am readily familiar with the practice of the office for collection and processing of correspondence for mailing with the United States Postal Service. Under that practice, correspondence is put in the office outgoing mail tray for collection and is deposited in the U.S. Mail that same day in the ordinary course of business. I am aware that, on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one (1) day after the date of deposit for mailing shown on this proof of service.
- ☒ **FEDERAL:** I declare under penalty of perjury under the laws of the United States that the foregoing is true and that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on February 28, 2006 at Fountain Valley, California.

